

UNITED STATES OF AMERICA
Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter Of)	
Creation Of A)	MM Docket 99-25
Low Power Radio)	
Service)	Public Notice DA 03-2277

**WRITTEN COMMENTS OF
THE AMHERST ALLIANCE**

THE AMHERST ALLIANCE is a Net-based, nationwide advocacy group, founded in 1998, which supports media reform in general and Low Power Radio in particular. Our Members include currently licensed Low Power FM broadcasters, aspiring Low Power FM broadcasters, aspiring Low Power AM broadcasters, Part 15 AM broadcasters, Internet broadcasters, Amateur Radio Service operators, broadcast engineers and concerned citizens.

In May of 2003, THE AMHERST ALLIANCE led a group of 19 parties who filed a Freedom Of Information Act (FOIA) for release of the MITRE Corporation's Report on testing of alleged interference from Low Power FM (LPFM). In response to this multi-party FOIA Request, and certain related correspondence, the MITRE Corporation Report was finally released to the general public in July of 2003.

As the Commission is aware, the MITRE Corporation Report concluded that no significant interference will result if Congress lifts the current statutory mandate for third adjacent channel spacing of all LPFM stations. As the Commission is also aware, the FCC is required by law to report to Congress the findings of the MITRE Report -- along with the Commission's own recommendations regarding whether Congress should remove the current statutory restrictions on channel spacing of LPFM stations.

A. LPFM: A "Triple Tested" Commodity

THE AMHERST ALLIANCE will not focus, in these Written Comments, on the technical details of the LPFM interference testing by MITRE Corporation.

However, we *will* urge the FCC to bear in mind -- when assessing any technical criticisms of the MITRE Report -- that the MITRE Corporation's testing is actually only the *latest* technical verification that second adjacent channel spacing for LPFM will not cause any significant interference. With issuance of the MITRE Corporation's Report, LPFM is now a *"triple tested" commodity*.

(1) *The FCC's own technical staff have verified that LPFM does not pose significant interference problems.* Before the final rule to establish a Low Power FM Radio Service was issued, the FCC's own technical staff concluded that LPFM stations would not cause interference problems if only second adjacent channel spacing were required.

Based on these conclusions, by its own technical experts, the FCC's final rule on LPFM incorporated second adjacent channel spacing requirements. Indeed, the FCC's *proposed* rule had envisioned a requirement for only *primary* adjacent channel spacing of LPFM stations. The FCC's shift to secondary adjacent channel spacing requirements was itself a concession to the cautious instincts of some, rather than a response to compelling technical evidence.

It was *Congress*, not the FCC, which mandated third adjacent channel spacing requirements -- pending the outcome of an independent technical study. The FCC's own technical experts had already given LPFM a "clean bill of health".

(2) *Even before MITRE Corporation became involved in the testing of alleged interference from LPFM stations, other independent technical experts had concluded that third adjacent channel spacing requirements were not needed in order to prevent significant interference from LPFM stations.* Notably included among these independent technical experts was Dr. Theodore Rapoport of Virginia Tech, who testified before the House Subcommittee on Telecommunications and The Internet, in February of 2000, that LPFM does not pose a significant threat of radio interference.

While other technical experts have expressed concern in the past about alleged interference from LPFM, none of *those* experts have been independent. All of them were being paid by established broadcasting interests, who have something to lose in the face of competition from LPFM. All *independent* experts have "cleared" LPFM.

(3) *Now, of course, MITRE Corporation's testing has verified what the other independent technical experts, and the FCC's own technical experts, had concluded earlier.* Thus, LPFM is indeed a "triple tested" commodity.

In fact, based on the October 14, 2003 Written Comments that were filed in this Docket by JT COMMUNICATIONS of Ocala, Florida, LPFM might even be termed a "*quadruple* tested" commodity. In its Written Comments, this broadcast equipment company reported that its own testing of LPFM has confirmed the results of MITRE Corporation's testing.

After *all* of this testing by *all* of these experts, how much more verification is needed -- to justify a recommendation to Congress that the statutory restrictions on LPFM should be lifted?

B. Ending The "Double Standard" For LPFM

In assessing the MITRE Report, the FCC should avoid applying to LPFM a standard of perfection that is not applied to any other form of broadcasting.

LPFM has been the target of a double standard since the beginning of serious governmental deliberations on the subject.

(1) *Even during the FCC's earliest deliberations on LPFM, well before Congress became involved, "short spacing" of LPFM stations was never "On The Table". Yet "short spacing" of full power radio stations is common. Why?*

(2) *When, in December of 2000, a “lame duck” Session of Congress imposed upon LPFM the current adjacent channel spacing restrictions -- doing so through an Appropriations bill “rider”, which bypassed both Committee Hearings and a floor vote in the United States Senate -- this became the first time Congress had ever overridden the FCC’s judgment on the technical issue of broadcasting interference.*

Why was the FCC’s judgment on the technical issue of interference honored in the case of every form of broadcasting *except* LPFM?

(3) *As part of the same legislation, Congress mandated a study of alleged interference from LPFM stations. This December 2000 mandate led to the MITRE Corporation Report of July 2003. Yet the new statute also requires that, even in the case of favorable testing results on alleged interference from LPFM (which is the current situation), the Commission may not lift third adjacent channel spacing requirements on its own authority. The most the Commission is allowed to do is the preparation of recommendations to Congress.*

This statutory requirement is yet another unprecedented intrusion into the FCC’s discretion on technical matters related to broadcasting interference. Why is LPFM the *only* form of broadcasting for which the FCC’s authority has been restricted in this manner?

(4) *In October of 2002, the FCC issued an “interim authorization”, under virtually deregulated conditions, for broadcasts using In Band On Channel (IBOC) Digital Radio. This “interim authorization” was provided in spite of acknowledgements*

by FCC Commissioners, FCC staff and others that IBOC Digital Radio requires a major expansion of bandwidth -- and thereby causes substantial interference with other, smaller existing radio stations (including, perhaps not so incidentally, newly licensed LPFM stations). A subsequent string of complaints about interference from IBOC have confirmed the reality -- and the gravity -- of interference from IBOC. However, despite this initial acknowledgements of interference from IBOC, the Commission approved IBOC Digital Radio unanimously. Further, in spite of the subsequent complaints about interference from IBOC, the Commission has so far failed to even seek public comments on: (a) a 40-party Petition For Reconsideration, filed by THE AMHERST ALLIANCE and other parties in October of 2003; or (b) an anti-IBOC Petition For Rulemaking, by Leonard Kahn, P.E., of New York's KAHN COMMUNICATIONS, that was filed in February of 2003 and amended in April of 2003. Why have Congress and the FCC "swatted the gnat" of LPFM, involving alleged interference on a fairly minor scale, while "swallowing the camel" of IBOC Digital Radio, involving known interference on a major scale?

The MITRE Corporation Report, by dispelling conclusively those rumors of LPFM interference that were never grounded in reality, offers both the FCC and Congress an opportunity to end the "double standard" which has hindered LPFM. It is time to establish new standards and procedures which do not single out LPFM, "arbitrarily and capriciously", for unexplained and unjustified discrimination.

C. Conclusions

For the reasons which have been set forth herein, THE AMHERST ALLIANCE urges the Commission to recommend to Congress removal of the current statutory requirement for third adjacent channel spacing of Low Power FM stations.

Respectfully submitted,

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